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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/698,908	10/31/2003	Randall T. Webber	111586-093UTL	2971
27189 7590 08/10/2007 PROCOPIO, CORY, HARGREAVES & SAVITCH LLP 530 B STREET SUITE 2100 SAN DIEGO, CA 92101			EXAMINER MATHEW, FENN C	
			ART UNIT 3764	PAPER NUMBER
			NOTIFICATION DATE 08/10/2007	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docketing@procopio.com  
PTONotifications@procopio.com

# Office Action Summary

Application No.

10/698,908

Applicant(s)

WEBBER ET AL.

Examiner

Fenn C. Mathew

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3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 23 May 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-56 is/are pending in the application.
- 4a) Of the above claim(s) 10, 13, 18-20, 25-38, 40, 42, 43, 48, 51, 53 and 54 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11-12, 14-17, 21-24, 39, 41, 44-47, 49, 50, 52, and 55-56 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-9, 11-12, 14-17, 21-24, 39, 41, 44-47, 49, 50, 52, and 55-56 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claims 1 and 45, Applicant has claimed that the combined motion of the user support frame and exercise arm between the start and end position substantially replicates *the natural movement of the human body when performing a free bar triceps dip exercise* (emphasis added). Applicant has attempted to define the invention in terms of a variable movement. Different users will have different movements during free bar triceps dip exercises depending on the desired exercise focus (i.e. differing angles to attack different points of the muscle) or the relative experience of the exerciser (i.e. a less experienced individual may not adhere to strict form during triceps exercise). Therefore the limitation is vague and indefinite.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 11-12, 14-15, 17, 21-22, 24, 41, 44, and 56 are rejected under 35 U.S.C. 102(b) as being anticipated by Tuttle (U.S. 248,121). Tuttle discloses a main frame having a user support pivot movable between a start position and end position, and exercise arm movably mounted on the frame, the exercise arm having handles for gripping by a user and movable between a start position and end position, a connecting linkage connecting movement of the exercise arm to movement of the user support whereby movement of the exercise arm from the start to the end position simultaneously rotates the user support from the start to the end position and a load (body weight) for resisting movement of the user support, exercise arm, and connecting linkage. Tuttle further teaches the exercise arm movably mounted on the frame for rotation about an exercise arm pivot. Tuttle further teaches the exercise arm pivot positioned rearward of the user support (absent claim language providing a more limiting interpretation, limitations drawn to position are relative and are met by the prior art). Tuttle further teaches various exercises as noted in the figures in which the arms are bent and then straightened. Tuttle further teaches the exercise arm comprising a single rigid arm. Tuttle further teaches the connecting link being a rigid link having a first and second end connected to the exercise arm and support frame respectively. Tuttle further teaches the connection with the exercise arm higher than the connection with the user support. Tuttle further discloses the load linked to the user support frame (body weight). Tuttle further discloses a 'rear upright'.

***Response to Arguments***

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5. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection. A closer review of the prior art has resulted in the new rejections. While Tuttle is clearly different from the inventive scope of the current invention, the claims are not patentably distinguishable. Applicant has attempted to distinguish in terms of functional language. As noted in the rejections under 35 U.S.C. 112 2<sup>nd</sup> paragraph, the limitations of the independent claims include those drawn towards body movements which will differ from person to person during the performance of exercise. Structurally, the claims are broad enough that Tuttle meets the limitations (the absence of an actual seat member with a backrest).

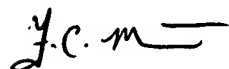
### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fenn C. Mathew whose telephone number is (571) 272-4978. The examiner can normally be reached on Monday - Friday 9:00am - 5:30pm.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



F.C. Mathew  
August 6, 2007